No. 71

In the Supreme Court of the United States

OCTOBER TERM, 1949

FEDERAL POWER COMMISSION, PETITIONER

v.

EAST OHIO GAS COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION

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addition to selling natural gas at retail to about 550,000 ultimate consumers in 69 communities in eastern Ohio, including Cleveland, Akron, Canton, Massillon and Youngstown (R. 89, 142), East Ohio owns and operates within the State of Ohio in the regular course of its business a number of large-diameter, high-pressure transmission lines which it uses to transport gas produced outside Ohio to its local distribution systems and which connect with the interstate transmission facilities of its affiliate, Hope Natural Gas Company, and of Panhandle (R. 143–144, 146). During 1945, East Ohio handled about 79 million Mcf of natural gas, 85% of which was purchased from out-of-state sources (62% from Hope and 23% from Panhandle); the remainder of the gas handled originated in Ohio and was produced or purchased by East Ohio (R. 147). None of this gas is sold for resale, but is sold locally at rates fixed in accordance with the applicable Ohio law.

A. *Pipe Lines Connecting With Hope.*—Four of East Ohio's transmission pipe lines, 18 and 20 inches in diameter, connect at the Ohio-West Virginia state line on the Ohio River with, and are direct continuations of, Hope's West Virginia transmission pipe lines from which East Ohio, until it began purchasing gas from Panhandle in 1944 (*infra,* pp. 9–10), procured 70% to 85% of its supply (R. 144). Three of the pipe lines

run northwesterly to Cleveland, about 120 miles (R. 91, 98, 143). The fourth extends in a northwesterly direction to the company's Gross Farm valve station near Canton, at which point two pipe lines, each designated "Youngstown Branch line," one 16 inches and the other 14 inches in diameter, extend in a northeasterly direction toward Youngstown (R. 91, 143).

In accordance with the contracts between East Ohio and Hope, Hope delivers to East Ohio, at these points of connection at the Ohio-West Virginia State line, gas produced outside of Ohio [3] at about 290 pounds pressure so that the greater portion of the gas is carried through East Ohio's transmission pipe lines without additional compression to most of its local distribution systems in Ohio, including those in and in the vicinity of Canton, Massillon, Akron and Cleveland (R. 144, 145, 171).[4] The remainder of the gas so

[3] Formerly the gas so delivered was produced in West Virginia, but more recently it has consisted of gas, some of which is produced in West Virginia and the rest purchased by Hope from Tennessee Gas and Transmission Company which transports it from Texas (R. 144).

[4] The transmission pipe lines leading to Cleveland terminate at three town-border regulator and metering stations (R. 172, 45, 65). From these stations, a high-pressure distribution system encircles a portion of Cleveland and extends to points of connection in that city with the company's low-pressure distribution system (R. 65–66). By the time the gas reaches these stations, pressure in the transmission lines varies between 60 and 100 pounds (R. 65). The pressure in the high-pressure distribution systems varies between 30 and

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OPINIONS BELOW

The opinion of the Federal Power Commission (R. 170–180) is reported at 74 PUR(NS) 256. The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 197–206) is reported at 173 F. 2d 429.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on February 14, 1949 (R. 206). The petition for a writ of certiorari was filed on May 13, 1949, and was granted on June 20, 1949 (R.

210). 337 U. S. 937. The jurisdiction of this Court is invoked under Section 19 (b) of the Natural Gas Act and under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

The East Ohio Gas Company owns and operates in the State of Ohio natural-gas transmission pipe lines which connect with the West Virginia transmission lines of Hope Natural Gas Company, an affiliate, at the Ohio-West Virginia State line and with the interstate pipe-line system of Panhandle Eastern Pipe Line Company at Maumee, Ohio. East Ohio purchases 85% of the natural gas handled by it from Hope and Panhandle, which transport it from sources outside Ohio to the points of connection with East Ohio's transmission pipe lines. East Ohio takes delivery of the gas at these points and transports it by means of its high-pressure transmission pipe lines to its local distribution systems in Ohio.

1. The basic question presented is whether, by virtue of its ownership and operation of these transmission pipe lines, East Ohio is a "natural-gas company," subject to the Federal Power Commission's jurisdiction under the Act. This question, in turn, involves the following subsidiary questions:

a. Whether these transmission pipe lines are used "in interstate commerce" within the meaning of Section 2 (7) of the Natural Gas Act.

b. Whether these transmission pipe lines are "facilities used for * * * [local] distribution" or "other transportation," exempt from Commission jurisdiction by Section 1 (b) of the Act.

2. A further question presented is whether, assuming East Ohio is a "natural-gas company," the Commission's directions that East Ohio comply with its general accounting orders, and file annual reports, are arbitrary, unreasonable and invalid under the Natural Gas Act and the Constitution.

STATUTE INVOLVED

The pertinent provisions of the Natural Gas Act of 1938 (Act of June 21, 1938, c. 556, 52 Stat. 821, as amended by Act of February 7, 1942, c. 49, 56 Stat. 83, 15 U. S. C. 717 *et seq.*) appear in the pamphlet copy of the Act submitted with this brief.

STATEMENT

Proceedings Leading up to Order of June 25, 1946.—On its own motion and on the complaint of the City of Cleveland, Ohio, the Federal Power Commission (Commission) on February 14, 1939, instituted an investigation into the cost of transporting natural gas by The East Ohio Gas Company from the Ohio River to the city gate of Cleveland and directed the company to file an inventory and a statement of the original cost of its property used and useful in such transporta-

tion (R. 100–103, 130). The Commission denied East Ohio's application for hearing, rehearing and stay of this order (R. 131)[1] (1 F. P. C. 586, 595) and on February 3, 1943, it ordered a hearing, on a date there fixed, to determine whether East Ohio was a "natural-gas company" (R. 134), which hearing, however, was later postponed until further order of the Commission (R. 134).

Meanwhile, three Ohio cities (Euclid, Cleveland and Lakewood), in 1942, filed complaints with the Commission praying that the Commission "redetermine" East Ohio to be a "natural-gas company" and require the company to comply with previous Commission orders and "to ascertain and submit its original cost" (R. 109–113, 114–119, 119–124). East Ohio moved to dismiss these complaints (R. 125–129). On February 16, 1946, the Commission issued an order which recited the previous proceedings involving East Ohio;[2] denied the company's motions to dismiss

[1] East Ohio's petition for review of this denial was dismissed by the Court of Appeals for the Sixth Circuit on the ground that the Commission's order was preliminary and not reviewable since the company had not been subjected to any definitive requirements (R. 132). *East Ohio Gas Co.* v. *Federal Power Commission*, 115 F. 2d 385 (C. A. 6).

[2] Following the 1942 amendment of Section 7 of the Act expanding the Commission's certificate jurisdiction (56 Stat. 83), East Ohio, on March 24, 1943, had applied for a certificate of public convenience and necessity for a proposed 112-mile pipe line connecting with the interstate pipe lines of Panhandle Eastern Pipe Line Company. In the alternative, it requested the Commission to find that it was not, and would

(R. 129, 135); ordered the complaints of the three cities consolidated with the investigation instituted by its original order of February 14, 1939; and set a date for hearing at which East Ohio was directed to show cause why it should not be held to be a "natural-gas company" and why it had not complied with the Commission's cost and accounting orders (R. 129–136). 5 F. P. C. 371. Following hearings held on March 19–20, 1946, the Commission, in an order dated June 25, 1946, made the following undisputed findings:

Order of June 25, 1946.—East Ohio, an Ohio corporation with its principal place of business at Cleveland, is and has been since some time prior to June 21, 1938, the date of the enactment of the Natural Gas Act, engaged in the business of producing, purchasing, transporting and distributing natural gas in Ohio by means of an extensive pipe-line system (R. 142). In

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not thereby become, a "natural-gas company." The Commission, on November 30, 1943, found East Ohio to be a "natural-gas company" within the meaning of the Natural Gas Act and granted the requested certificate (R. 134, 148). 4 F. P. C. 15, 19. Without seeking review of the Commission's order, East Ohio accepted the certificate and has since been operating thereunder (R. 134, 148–149). See *infra*, pp. 9–10. East Ohio also applied for a "grandfather" certificate for its facilities in operation on February 7, 1942, the date of the 1942 amendment, or alternatively for a finding that it was not a "natural-gas company." The Commission, on January 18, 1944, in issuing the "grandfather" certificate, again found East Ohio to be a "natural-gas company" (R. 134, 149). 4 F. P. C. 497. Without seeking judicial review of this finding, East Ohio accepted the certificate (R. 149).

delivered is carried to the Youngstown-Warren-Niles area, and is propelled by the pressure at which it is received from Hope plus additional pressure obtained by repumping at East Ohio's Gross Farm compressor station (R. 145). Hope's West Virginia compressor station, its transmission pipe lines from there to the Ohio-West Virginia State line, and East Ohio's pipe lines[5] are operated and controlled as a single unit or system respecting the pressures and volume of natural gas delivered by Hope (R. 145). By these operations, gas flows continuously and uninterruptedly from Hope's compressor station in West Virginia to East Ohio's points of local distribution in Ohio (R. 145).

These transmission facilities of East Ohio are also used to carry natural gas produced in Ohio to points of local distribution in East Ohio's system (R. 144). The first Ohio-produced gas entering these lines is introduced at a point ap-

60 pounds; and in the low-pressure distribution systems, the pressure is from 4 to 6 ounces (R. 65–66).

There are similar high-pressure and low-pressure distribution systems at Akron and Youngstown (R. 47). Near all the other communities served by East Ohio, there are town-border regulator and metering stations from which local distribution lines emanate (R. 47).

[5] Also a part of East Ohio's transmission system for the transportation of this gas is T. P. L. No. 1, a 12-inch transmission pipe line, which commences at a place called McKee Farm in Summitt County, Ohio, and which extends northerly to Cleveland (R. 91, 143).

proximately 40 miles from the State line (R. 144).[6]

B. *Connection with Panhandle.*—Since March 1944, East Ohio has owned and operated, in accordance with the certificate of public convenience and necessity issued it by the Commission (*supra,* pp. 4–5, fn. 2), a 20-inch transmission pipe line, 112 miles long, which commences at a point near Maumee, Ohio, about 10 miles inside the western border of Ohio, where it connects with a 16-inch transmission pipe line of Panhandle, and extends in a general easterly direction to the Cleveland-Akron area (R. 91, 95, 146). Panhandle's 16-inch transmission pipe line connects at a point in Ohio near the Ohio-Michigan boundary with Panhandle's 22-inch transmission pipe line which in turn extends from Texas, Oklahoma and Kansas into Ohio and Michigan (R. 146). Panhandle's 16-inch pipe line in Ohio and East Ohio's connecting line are direct extensions from Panhandle's 22-inch line (R. 146). Only natural gas received from Panhandle is carried in this line of East Ohio (R. 147).

The gas (50,000 Mcf per day) which East Ohio purchases from Panhandle is produced in

[6] East Ohio also maintains connection with the transmission facilities of Peoples Natural Gas Company at the Ohio-Pennsylvania State line at a point near Petersburg, Ohio, where occasionally, at times of heavy demands, comparatively small quantities of gas are sold and delivered to East Ohio by Hope through the agency of Peoples (R. 145–146).

Texas, Oklahoma and Kansas and transported by Panhandle to the point of connection with East Ohio (R. 147). From that point, East Ohio takes delivery of this gas and carries it in bulk to a point south of Cleveland, where part is carried through a branch transmission pipe line to that city, and the remainder on into East Ohio's main transmission system, south of Cleveland (R. 147). In accordance with the contract between Panhandle and East Ohio, Panhandle maintains such high pressures (about 320 pounds) in its 22-inch line at the point of connection with its 16-inch line that the gas is carried through East Ohio's transmission lines to the points of destination without additional compression, except that portion of the gas which is transmitted to the Youngstown-Warren-Niles area and to storage which receive additional pressure at East Ohio's Gross Farm valve station (R. 147, 171). By these operations the natural gas flows continuously and uninterruptedly from the points of production in Texas, Oklahoma and Kansas to the points of local distribution and storage areas in Ohio (R. 147).

Based on these facts, the Commission found in its order of June 25, 1946 that these transmission pipe lines of East Ohio were not facilities used for local distribution but were facilities for the transportation of natural gas in interstate commerce (R. 148). It further found that East Ohio is "engaged in the transportation of natural gas

in interstate commerce" and is a "natural-gas company" within the meaning of the Natural Gas Act (R. 148). Accordingly, it directed East Ohio to comply (1) with all previous accounting orders (Nos. 69, 69–A, 73 (set out at R. 71, 83, 74)), issued by the Commission and applicable to "natural-gas companies," including those orders relating to the determination of original cost of property, and (2) with all its previous orders (Nos. 63, 80, 86, 100, 113 (set out at R. 69, 80, 81, 85, 87)) requiring "natural-gas companies" to file annual financial and statistical reports on forms prescribed by the Commission (R. 150).[7]

Subsequent Proceedings.—East Ohio, the State of Ohio, and the Public Utilities Commission of Ohio applied on July 24, 1946, for rehearing and stay (R. 151–163, 163–169), which the Commission granted (R. 169–170). On rehearing, the Commission in a detailed opinion (R. 170–180)[8]

[7] The Commission on December 30, 1947 deleted from this order the requirement of Paragraph (A) as to the furnishing of certain information relating to the cost of transporting natural gas from the Ohio River to the City of Cleveland as required by its order of February 14, 1939, as supplemented. That requirement was deleted because the information required either duplicated other provisions of the order of June 25 or no longer would serve any useful purpose (R. 195, 196).

[8] As noted in the Commission's opinion, East Ohio had, concurrently with this proceeding, on January 18, 1946, applied for a certificate of public convenience and necessity for a 95-mile transmission pipe line, or in the alternative for a finding that it was not a "natural-gas company." (R. 170,

reviewed East Ohio's facilities and operations and noted that it "failed, after careful deliberation, to find good cause to depart from [its] previous findings" (R. 179). It expressly rejected East Ohio's contention that its 650-mile pipe-line transportation system was a mere incident to local distribution (R. 174–176, 179). It further held that the finding that East Ohio is a natural-gas company "will, as we view it, in no manner interfere with the exercise by the State of Ohio of its authority to regulate the operations of the company in its business of local distribution" (R. 179–180). Accordingly, it dissolved its stay and directed that its order of June 25, 1946, be made effective (R. 180). The further applications of East Ohio, the State of Ohio, and the Public Utilities Commission of Ohio for rehearing (R. 180–188; 188–195) were denied by the Commission (R. 195–196).

In its petition for review filed in the Court of Appeals for the District of Columbia Circuit as authorized by Section 19 (b) of the Act, East Ohio sought reversal of the Commission's order on the ground that the Commission had improperly found it to be a "natural-gas company" sub-

fn. 1.) The Commission on July 3, 1946, granted the requested certificate again based on a finding that East Ohio was a "natural-gas company." 5 F. P. C. 639. As in the other instances (*supra*, pp. 4–5, fn. 2), East Ohio accepted this certificate and has operated thereunder, without seeking judicial review.

ject to its jurisdiction under the Natural Gas Act (R. 6–7). It further claimed that even if it were a "natural-gas company," the orders with which it was directed to comply exceeded statutory and constitutional limitations as applied to it both because they required information in respect to facilities other than those relating to the transportation of natural gas in interstate commerce and because the cost of compliance was so great as to render the orders arbitrary (R. 7–8). The State of Ohio and the Public Utilities Commission of Ohio were permitted to intervene as petitioners. The Court of Appeals, in an opinion by Judge Clark, reversed (R. 197–206). It held that the Commission erred in finding that East Ohio was a "natural-gas company" under the Act. "We therefore," it stated, "reach no decision as to the reasonableness or constitutional validity of the orders" (R. 205). Judge Edgerton dissented in a separate opinion (R. 205–206).

SPECIFICATION OF ERRORS TO BE URGED

The United States Court of Appeals for the District of Columbia Circuit erred:

1. In holding that East Ohio is not a "natural-gas company" subject to the Commission's jurisdiction under the Natural Gas Act.

2. In holding that the definition of "interstate commerce" contained in Section 2 (7) of the Act is not coextensive with its ordinary and well-established meaning.

3. In holding that East Ohio's transmission pipe lines are devoted solely to the local distribution of natural gas to local consumers within the provision of Section 1 (b) exempting such facilities from Commission jurisdiction.

4. In holding that East Ohio is completely and validly regulated by the Ohio Commission.

5. In holding that the assertion of Commission jurisdiction over East Ohio would constitute "unnecessary, undesirable and unintended usurpation of state regulatory authority."

6. In failing to hold that the Commission's order directing East Ohio to comply with its general accounting orders and to file annual reports was reasonable and valid.

7. In reversing the order of the Commission.

SUMMARY OF ARGUMENT

I

A. In *East Ohio Gas Co.* v. *Tax Commission,* 283 U. S. 465, this Court held that most of the very pipe lines here involved were used in interstate commerce of national concern. Contemporaneous cases indicated that the states were powerless to regulate such activities. Congress was aware of the *East Ohio* case, and the history of the Natural Gas Act shows that East Ohio was mentioned as the type of company which the statute was designed to reach.

B. (1) East Ohio is covered by the Act's definition of "natural-gas company," as "a person engaged in the transportation of natural gas in interstate commerce * * *." At least since *The Daniel Ball,* 10 Wall. 557, it has been firmly established that a person who transports a product on a portion of an interstate through journey, even though his portion of the transportation occurs entirely within a single state, is engaged in interstate commerce.

The holding below that East Ohio nevertheless is not engaged in "interstate commerce" within the Act's definition because its interstate activities take place in one state ignores the fact that the Act was passed to fill the gap in state regulation brought to light by the *Attleboro* and *East Ohio* cases which related to that precise situation. It also conflicts with this Court's holding in *Interstate Natural Gas Co.* v. *Federal Power Commission,* 331 U. S. 682, that "interstate commerce" as used in the Natural Gas Act has the meaning customarily accorded that phrase by the courts.

Moreover, several provisions of the Act belie East Ohio's contention that, since it is engaged in transportation and not the sale for resale of natural gas in interstate commerce, no useful purpose would be served by federal regulation of it and that therefore authority for such regu-

lation does not exist. Section 1 (b) makes transportation of natural gas in interstate commerce as distinct from its sale for resale, a basis for Commission jurisdiction. In addition, the language of Section 5 (b) authorizing the Commission to investigate and determine "the cost of * * * transportation of natural gas" buttressed by its legislative history leaves no doubt that Congress meant the Act to apply to precisely the class of situations here involved. The provisions of Section 7, particularly sub-section (a) empowering the Commission to require the extension of service, the establishment of physical connections and the wholesale sale of gas, reenforce this conclusion, for that Section also is designed exclusively to deal with the regulation of transportation as such and has no relation to the regulation of rates.

(2) East Ohio's transmission pipe lines are not exempted from Commission jurisdiction by Section 1 (b) as "facilities used for * * * [local] distribution," or as "other transportation". These lines, extending about 100 miles into Ohio before reaching the centers of distribution, are neither local nor distribution lines, and the transportation is "in interstate commerce", and therefore not affected by the phrase "other transportation". The legislative history shows that these exemptions were meant to cover local matters, and were not intended to subtract from Section

1 (b)'s affirmative grants of jurisdiction relating to interstate commerce of national concern.

There are several additional reasons why the court below improperly held these pipe lines to be local distribution facilities. To classify facilities in accordance with the ultimate purpose for which the gas is used, as the court below did, would largely defeat the effectiveness of the Act, since practically all facilities used in the industry have local distribution or sales to industrials, both of which are exempt, as their ultimate purpose. The functional classification of facilities whereby transportation and transmission is differentiated from distribution has been universally accepted in the industry, and indeed by East Ohio itself. Secondly, *Connecticut Light & Power Co.* v. *Federal Power Commission,* 324 U. S. 515, and *Jersey Central Power & Light Co.* v. *Federal Power Commission,* 319 U. S. 61, hold that the Commission's jurisdiction embraces all companies engaged in specified activities in interstate commerce, even companies engaged predominantly, but not entirely, in local distribution. The *Connecticut* case, relied on by respondent, does not remotely suggest that long range high-pressure transmission lines are exempt. Finally, the Commission's finding that East Ohio's transmission pipe lines are not facilities used for local distribution is reasonable under the law and amply supported by the evidence, and thus is binding on the courts.

(3) The constitutional doubts suggested by East Ohio as arising if it is held to be a "natural-gas company" and thereby subjected to public utility obligations have already been put to rest by *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, where the same constitutional issue was raised and definitely disposed of.

II

A. The Commission's order requiring East Ohio (1) to comply with the Commission's general accounting orders prescribing a uniform system of accounts to be kept and observed by all "natural-gas companies" and requiring original cost determinations of natural-gas plant, and (2) to file annual financial and statistical reports on forms prescribed for all natural-gas companies are well within the Commission's statutory powers despite the fact that the information so required includes data relative to facilities used in local distribution exempt from Commission regulation by Section 1 (b). The language of Sections 6 (b), 10 (a), 16 and 8 (a), plainly authorizes the Commission's imposition of these requirements in regard to all of a "natural-gas company's" properties, including the properties exempted from Commission regulation. The legislative history shows that the plenary nature of the Commission's power in these matters was called to Congress' attention and given Congressional approval. In addition, this

Court has already construed the similar provisions of the Interstate Commerce Act and the Federal Power Act as bestowing such plenary power. "The object of requiring such accounts to be kept in a uniform way and to be open to the inspection of the Commission is not to enable it to regulate the affairs of the corporations not within its jurisdiction. but to be informed concerning the business methods of the corporations subject to the act that it may properly regulate such matters as are really within its jurisdiction." *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194, 211.

B. East Ohio's constitutional objections to these requirements are without substance. *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194, and *Northwestern Electric Co.* v. *Federal Power Commission*, 321 U. S. 119, settle (1) that the Commission's orders do not go beyond the commerce power of Congress or infringe upon the reserved powers of the states, and (2) that they do not violate the Fourth Amendment's prohibition against unreasonable searches and seizures. Nor is the cost of compliance so great as to involve a deprivation of property without due process of law. The "general estimate" of between $1,500,000 and $2,000,000 was unaccompanied by any details to lend it credibility and was greatly in excess of the actual costs incurred by companies with comparative properties. Such

costs are legitimate costs of compliance, justified by the need for effective regulation in the public interest.

ARGUMENT

I

EAST OHIO IS A "NATURAL-GAS COMPANY" SUBJECT TO THE JURISDICTION VESTED IN THE COMMISSION BY THE NATURAL GAS ACT

As we shall show, East Ohio is clearly engaged in interstate commerce, and in transportation subject to the Act, not merely local distribution. But we first wish to refer to facts which show that when the Act was enacted East Ohio in particular was intended to be covered by it.

A. CONGRESS INTENDED TO SUBJECT EAST OHIO TO REGULATION AS A "NATURAL-GAS COMPANY" UNDER THE NATURAL GAS ACT.

The court below has stated that East Ohio "is now and has been very thoroughly and completely regulated by the Ohio Commission" (R. 200). Accordingly, it has held, quoting from this Court's decisions, that since the plain intent of Congress in enacting the Act was to complement state regulation and to fill the gap where the states are powerless to regulate, "the Act was never intended to confer jurisdiction over such a company as East Ohio since that company was already completely and validly regulated by the Ohio Commission long prior to the passage of the Act" (R. 204). This holding below, we submit, fails to take into account the situation in regard to

East Ohio existing at the time of the enactment of the Natural Gas Act and which still exists. Congress was aware of this situation and shaped the Act to deal with it.

Congress passed the Natural Gas Act, as the Court has repeatedly noted,[9] with an awareness of this Court's decisions that while the states could regulate activities in interstate transmission of gas which were local in character, *i. e.*, direct sales to local consumers (*Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U. S. 23), they were without power to regulate activities in interstate transmission of gas which were national in character. *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83; cf. *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298. See H. Rep. No. 709, 75th Cong., 1st sess., pp. 1–2; S. Rep. No. 1162, 75th Cong., 1st sess., pp. 1–2.[10] Accordingly, it is clear, as the court below held, that the Act was intended to fill the regulatory gap. H. Rep. No. 709, 75th Cong., 1st sess., p. 3.

One of the cases in this field involved the East Ohio Company itself. *East Ohio Gas Co.* v. *Tax*

[9] *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission*, 332 U. S. 507, 514–521; *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U. S. 682, 689–690; *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U. S. 581, 601–603; *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591, 609–613; *Illinois Natural Gas Co.* v. *Central Illinois Pub. Serv. Co.*, 314 U. S. 498, 506–508.

[10] The Senate Committee on Interstate Commerce incorporated the House Report No. 709 verbatim in its report.

Commission, 283 U. S. 465. In that case, this Court, while sustaining the constitutionality of an Ohio statute imposing excise taxes for the privilege of doing intrastate business, held that most of the very pipe lines here involved (those connecting at the state boundaries with out-of-state pipe lines of Hope and Peoples) although located entirely within the State of Ohio, were used in interstate commerce which was national in character. This Court explicitly stated (283 U. S. at 470):

> The transportation of gas from wells outside Ohio by the lines of the producing companies to the state line and thence by means of appellant's high pressure transmission lines to their connection with its local system *is essentially national—not local—in character and is interstate commerce within as well as without that State.* The mere fact that the title or the custody of the gas passes while it is en route from State to State is not determinative of the question where interstate commerce ends. *Public Utilities Comm.* v. *Landon,* 249 U. S. 239, 245. *Missouri* v. *Kansas Gas Co.,* 265 U. S. 298, 307–309. *Peoples Gas Co.* v. *Pub. Serv. Comm.,* 270 U. S. 550, 554. *Public Util. Comm.* v. *Attleboro Co.,* 273 U. S. 83, 89. * * * [Italics supplied.]

Thus, at the time of the passage of the Act, East Ohio's transportation of natural gas had been

held to involve interstate commerce of national concern. Such activities this Court had held in the *Attleboro* case to be beyond the power of the states to regulate. The court below was thus clearly in error in holding that the Ohio Public Service Commission "completely and validly regulated"[11] East Ohio; the Ohio Commission's regulation of East Ohio's transportation of natural gas in interstate commerce, to the extent that such regulation exists, is possible, not because the State of Ohio has constitutional power in the premises, but because East Ohio, for reasons best known to it, has acquiesced in the Ohio

[11] In fact, the Ohio Commission does not regulate East Ohio completely. As pointed out in the Commission's opinion (R. 176–177):

> * * * the State of Ohio lacks power to confer upon its Commission authority to require a certificate of public convenience and necessity for a transmission line used solely for transporting out-of-state gas, as for example, East Ohio's 112-mile line connecting with Panhandle. Any prior doubt as to whether this be so, was resolved when Congress provided in Section 7 (c) of the Natural Gas Act for national control of this very matter (*Illinois Gas Co.* v. *Public Service Co.*, 314 U. S. 498, 506, 510; cf., *Colorado-Wyoming Gas Company* v. *Federal Power Commission*, 324 U. S. 626, 629–631). Moreover, it appears from the record that the Ohio Commission does not require the filing of reclassification and original cost studies of gas plant. * * *

Also, where the gas involved comes from out of state, the Ohio Commission does not possess regulatory power of the nature of that provided for in Sections 7 (a), (b) of the Act. See, *infra*, pp. 47–48.

Commission's assertion and exercise of such jurisdiction.[12]

The Act's legislative history shows plainly that Congress was aware of the Court's holding in the *East Ohio* v. *Tax Commission* case and intended that the activities there held to be national in character should be regulated under the Act. This is clear from the fact that the *East Ohio* v. *Tax Commission* case was referred to a number of times in the course of considering possible natural-gas legislation as illustrating the gap in state regulation which the legislation was intended to fill. During the hearings on H. R. 11662,[13] a predecessor bill (Hearings before a

[12] The basic provision of the Ohio General Code, pursuant to which the Ohio Commission exercises jurisdiction, purports to cover all activities taking place within the State of Ohio without differentiating between those in intrastate commerce and those in interstate commerce. See Ohio General Code, Section 614–2. The State of Ohio and the Ohio Commission urged in the court below that East Ohio's activities were in intrastate commerce. See, *infra*, pp. 33–34.

[13] The legislative history is contained in three committee hearings on proposed natural-gas legislation preceding adoption of the Natural Gas Act. The first of these was in 1935, House Hearings on H. R. 5423 (74th Cong., 1st sess.); the second, in 1936, House Hearings on H. R. 11662 (74th Cong., 2d sess.); the third, in 1937, House Hearings on H. R. 4008 (75th Cong., 1st sess.). H. R. 4008 later became H. R. 6586, which was subsequently passed as the Natural Gas Act.

In the hearings on H. R. 4008, there are repeated references to the testimony in the hearings on H. R. 11662 (pp. 1, 23, 32, 39, 41, 81, 108), and to hearings on H. R. 5423 (pp. 61, 84). Likewise, in the hearings on H. R. 11662, similar references are made to testimony given in the hearings on H. R. 5423 (pp. 10, 25, 35, 46, 81, 112). It seems clear, there-

Subcommittee of the House Committee on Interstate and Foreign Commerce, 74th Cong., 2d sess.), Mr. Dozier A. DeVane, then the Commission's Solicitor, cited the *Tax Commission* case at several places in a brief supporting the constitutionality of the proposed legislation (Hearings, pp. 13, 14, 16, 17). And after stating the facts and this Court's holding in the *Tax Commission* case, Mr. DeVane stated (Hearings, p. 16):

> Thus, the power of Congress to regulate the interstate transportation and wholesale sale of natural gas has been fully recognized by the Supreme Court of the United States. This power is not in conflict with any authority resident in the States, but, on the contrary, augments that power. The States cannot control the wholesale rates extracted for natural gas thus transported, *nor may they regulate any other of the phases of the interstate transportation.* Moreover, the regulation of retail rates and matters incident to local distribution have been exclusively reserved by H. R. 11662 to the States.[14] [Italics supplied.]

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fore, that the record of all these hearings was considered in the enactment of the Natural Gas Act. Moreover, the members of the House Committee, with few exceptions, were the same during the three-year period.

[14] The court below relied upon the following excerpt from Mr. DeVane's testimony:

> The whole purpose of this bill is to bring under Federal regulation the pipe lines and to leave to the State Commissions control over distributing companies and

The *Tax Commission* case was also cited by Mr. John E. Benton, General Solicitor for the National Association of Railroad and Utilities Commissioners, who paraphrased its holding: "This

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over their rates, *whether that gas moves in interstate commerce or not.* [Emphasis supplied by court.] (R. 205.)

But that testimony, when read in context, does not support the conclusion of the court. Section 1 (b) of the proposed legislation then being considered provided:

> The provisions of this Act shall apply to the transportation of natural gas in high-pressure mains in interstate commerce and to natural-gas companies engaged in such transportation, but shall not apply to the distribution of natural gas moving locally in low-pressure mains or to the facilities used for such distribution or to the production of natural gas: *Provided*, That nothing in this Act shall be construed to authorize the Commission to fix rates or charges for the sale of natural gas distributed locally in low-pressure mains or for the sale of natural gas for industrial use only.

The excerpt from Mr. DeVane's testimony related to that version of Section 1 (b) and occurred in the following colloquy (Hearing before Subcommittee of the House Committee on Interstate and Foreign Commerce, on H. R. 11662, 74th Congress, 2d sess., p. 24):

* * * * *

> Mr. DEVANE (continuing). Section 1 (b) defines the jurisdiction over the industry.
>
> Mr. LEA. Mr. Merritt wanted to ask you a question.
>
> Mr. MERRITT. I thought you were going to skip that. That is what I wanted to ask about.
>
> Mr. DEVANE. No, sir. Section 1 (b) provides that the provisions of this act shall be applicable to the transportation of natural gas in high-pressure mains in interstate commerce and to natural-gas companies engaged in such transportation, but shall not apply to the distribution of natural gas in low-pressure mains or to the facil-

case established very clearly that a State has jurisdiction to regulate the business of distributing gas after it has been imported, and the pressure has been stepped down to permit of local distribution. It, however, leaves the State authorities still subject to the rule announced in the *Kansas* case, and followed in the other cases which I have cited." (Hearings, p. 88).

Moreover, in the course of earlier House hearings on H. R. 5423, 74th Cong., 1st sess., Mr. Benton, who there also had appeared as General Solicitor for the National Association of Railroad and Utilities Commissioners, recommended on behalf of his Association that the bill be amended by the addition of provisos at least one

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ities used for such distribution or to the production of natural gas.

Mr. MERRITT. Well, facilities for such distribution refer only to low-pressure distribution, does it?

Mr. DEVANE. It refers to distribution of natural gas to consumers.

The whole purpose of this bill is to bring under Federal regulation the pipe lines and to leave to the State commissions control over distributing companies and over their rates, whether that gas moves in interstate commerce or not.

* * * * *

The last paragraph when read in context is clearly concerned with the local distribution to local consumers. The phrase "whether that gas moves in interstate commerce or not" obviously refers to *Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U. S. 23), involving direct sales to ultimate consumers from pipe lines crossing state boundaries. See *supra*, p. 21.

of which would seem to exclude companies such as East Ohio. Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 5423, 74th Cong., 1st sess., p. 1668.[15] Somewhat similar provisos were suggested for inclusion in the proposed power legislation which was before Congress at the same time. *Id.* at page 1661. Mr. Benton's explanation, in contrast to the language of the proposed amendments, might well have led Congress to believe that his amendments were not at all inconsistent with the holding of the *East Ohio* case. In discussing one of the Power Act amendments, he described it as "not inconsistent with the *Ohio Gas Co.* case," but urged that it be enacted to make clear that the new statutes did not apply to "interstate com-

[15] "Section 301 * * * (b) * * *

"*Provided, however*, That a public utility which purchases at wholesale natural gas transmitted into one State from another State or from a foreign country, which natural gas is used by the purchasing public utility solely in distribution and sale to local consumers in the State where delivered or in local distribution, shall not by reason of such ownership or operation be subject to the provisions of this Act."

"(c) * * *

"*Provided, however*, That after delivery of said gas to a distributing company for distribution to local consumers, or after the distributor or transmitter following such transmission, by storage of said gas or by reduction of the pressure thereof, or otherwise, so deals with the same as to mark the end of long-distance transmission and the disposition of said gas for use in distribution to local consumers, any transmission to such consumers shall be deemed to be intrastate commerce, or in local distribution not subject to the jurisdiction of the Commission."

merce of that local character which was referred to by the court in the *Pennsylvania Gas* case," such as a company "located in a city like Texarkana and its distribution lines may be on both sides of the State line" (*id.* at p. 1679). Mr. Benton then turned to the proposed natural gas legislation (see p. 28, fn. 15, *supra*), and stated that "these paragraphs[16] were drawn in the light of the decision of the United States Supreme Court in *East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 465, 470, which I have referred to before." *Id.* at p. 1695. He quoted at length from this Court's opinion without additional explanation or any indication of disapproval. It is thus clear that the attention of Congress was called to the *East Ohio* case when the Natural Gas Act was under consideration, and that a proposal which might have had the effect of overturning that decision was not adopted.

In addition to the foregoing, it should be noted that the Federal Trade Commission reviewed East Ohio's activities in detail in its investigation conducted pursuant to Sen. Res. 83, 70th Cong., 1st sess. "Utility Corporation Reports," Sen. Doc. 92, 70th Cong., 1st sess., Part 83, pp. 630–641; 1695–1774; Part 84A, pp. 229, 363, 373, 476.[17]

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[16] The reference was to paragraphs (c) and (d) of Section 301; no explanation as to the purpose of the proposed change in paragraph (b) (see p. 28, fn. 15, *supra*) appears in his testimony.

[17] The reports of the Federal Trade Commission show that "inflation of assets," "stock watering" and "misrepresenta-

This investigation, as set out in Section 1 (a) of the Natural Gas Act, disclosed the necessity for the regulation provided by the Act. In its final report, the Trade Commission described East Ohio, along with five other companies, as "typical natural-gas transmission companies."[18] It also described East Ohio's pipe lines as "important transmission pipe lines upon which the continuity of adequate service to such large cities as Cleveland, Akron, Youngstown, and numerous other communities depend." Sen. Doc. 92, 70th Cong., 1st sess., Part 84A, pp. 558, 560–561.

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tion of financial condition" among some natural-gas companies were "specific evils" in the industry. See Sen. Doc. 92, 70th Cong., 1st sess., Part 84–A, pp. 615–616; *id.*, Part 83, pp. 567–568; see, also, Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 4008, 75th Cong., 1st sess., pp. 115–116. It also shows that, in 1935, the investment accounts of East Ohio reflected write-ups amounting to $15,454,511.65. See "Report on an Examination of Accounts and Records of the East Ohio Gas Co." (Sen. Doc. 92, 70th Cong., 1st sess., Part 83, p. 1695, *et seq.*; see, also, testimony of the F. T. C. accounting examiner (*id.*, p. 630, *et seq*)).

[18] Three of these five companies (Hope (320 U. S. 591), Colorado Interstate (324 U. S. 581) and Interstate Natural Gas Co. (331 U. S. 682)) have already been dealt with by this Court as "natural-gas companies." The fourth, the Columbia Gas & Electric System, now known as the Columbia Gas System, includes the following companies which the Commission has held to be "natural-gas companies": Virginia Gas Transmission Corporation, 3 F. P. C. 940; Atlantic Seaboard Corporation, 3 F. P. C. 941; United Fuel Gas Company, 4 F. P. C. 534; Central Kentucky Natural Gas Company, 3 F. P. C. 1083; The Ohio Fuel Gas Company, 4 F. P. C. 1033; Eastern Pipe Line Company, 3 F. P. C. 919; Home Gas Company, 3 F. P. C. 895; Cumberland and Allegheny Gas Company, 4

These materials from the Act's legislative history plainly demonstrate that the Act, properly viewed in the light of the situation existing at the time of its enactment (*Panhandle Eastern Pipe Line Co.* v. *Public Service Commission*, 332 U. S. 507, 516; *Parker* v. *Motor Boat Sales, Inc.*, 314 U. S. 244, 248; *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. 2d 953, 964 (C. A. 2), certiorari denied, 319 U. S. 741), was intended to regulate East Ohio as a "natural-gas company," subject to the provisions of the Act. Congress, we submit, did not intend that the jurisdiction of the Federal Commission be determined by the resistance *vel non* to state regulation on the part of the company sought to be regulated. Cf. *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U. S. 682, 691–692.

B. EAST OHIO IS A "NATURAL-GAS COMPANY" AS DEFINED IN THE NATURAL GAS ACT

The language of the Act makes it plain that East Ohio is a "natural-gas company" subject to the Commission's jurisdiction under the Act by virtue of its transportation of natural gas

F. P. C. 472; The Manufacturers Light and Heat Company, 4 F. P. C. 821; Natural Gas Company of West Virginia, 4 F. P. C. 391. As to the remaining company, United Gas Public Service Company, its properties and those of its subsidiaries, except for certain Texas properties, were acquired by United Gas Pipe Line Company which the Commission has also determined to be a "natural-gas company." 3 F. P. C. 863. Judicial review of these determinations was not sought.

from the points at which it accepts delivery to the points at which it delivers the gas into its local distribution systems, in continuation of the out-of-state transportation by others. Section 2 (6) of the Act, defines "natural-gas company" as "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." In so far as here relevant, "interstate commerce" is defined in Section 2 (7) as "commerce between any point in a State and any point outside thereof, * * *." As a "natural-gas company" engaged in the transportation of natural gas in interstate commerce, East Ohio is subject to the various provisions of the Act, as provided in Section 1 (b) of the Act, which states:

> The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

The court below, however, has found that East Ohio does not fall within the definition of "natural-gas company." That is based on the

holding that the transportation performed by East Ohio, taking place, as it does, wholly within Ohio, is not in "interstate commerce" as defined in Section 2 (7) of the Natural Gas Act. The court below has construed the phrase "commerce between any point in a State and any point outside thereof" in that definition as importing the additional requirement that the transportation be carried on by a single company in more than one state. It has further held that these transportation facilities are within the exemption of Section 1 (b) for "local distribution of natural gas * * * [and] the facilities used for such distribution" (R. 202). These holdings are, we submit, plainly incorrect.

1. *East Ohio is engaged in the transportation of natural gas in interstate commerce as defined in the Act and, therefore, is a "natural-gas company" subject to the Act's provisions.*

(a) *Respondent's transportation is interstate commerce.*—Although the contrary was urged below by the State of Ohio and the Ohio Commission, it is now conceded by respondents that "an interstate movement of gas continues in East Ohio's lines from points of connection with the interstate pipe lines for at least some considerable distance" (Br. in Opp., p. 8). This concession is in line with this Court's decision in *East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 465, discussed in detail, *supra*, pp. 21–22, where it

was held that most of the transportation here involved was in interstate commerce of national concern.[19]

The holding in the *East Ohio* v. *Tax Commission* case merely involved the application of familiar principles. At least since *The Daniel Ball*, 10 Wall. 557, it has been firmly established that a person who transports a product on a portion of an interstate-through journey, even though his portion of the transportation occurs entirely within a single state, is engaged in interstate commerce. "When persons or goods move from a point of origin in one state to a point of destination in another, the fact that a part of that journey consists of transportation by an independent agency solely within the boundaries of one state does not make that portion of the trip any less interstate in character. * * * That portion must be viewed in its relation to the entire journey rather than in isolation. So viewed, it is an integral step in the interstate movement. See *Stafford* v. *Wallace*, 258 U. S. 495." *United States* v. *Yellow Cab Co.*, 332 U. S. 218, 228–229. See, also, *United States* v. *Capital Transit Co.*, 325 U. S. 357, 363; *Joseph* v. *Carter & Weekes Co.*, 330 U. S. 422; *Interstate Natural Gas Co.* v. *Fed-*

[19] The *Tax Commission* case and the principles there applied are equally applicable to East Ohio's 114-mile pipe line connecting with Panhandle's interstate transportation system. There accordingly is no doubt that this pipe line is also a facility for interstate commerce.

eral Power Commission, 331 U. S. 682, 688, and cases cited in footnote 10; cf. *Interstate Oil Pipe Line Co.* v. *Stone,* 337 U. S. 662.

These principles have been applied in the field of the interstate transmission of natural gas and electricity, with the result that, where the commerce involved was national rather that local in character, the states were held to be without regulatory power. *Public Utilities Commission* v. *Attleboro Steam and Electric Co.,* 273 U. S. 83; *Peoples Natural Gas Co.* v. *Public Service Commission,* 270 U. S. 550; cf. *Missouri* v. *Kansas Gas Co.,* 265 U. S. 298. In the *Peoples* case, the company's operations, taking place entirely in Pennsylvania, were closely analogous to those of East Ohio. In addition to the locally produced gas which it transported and sold, the company purchased West Virginia-produced gas which it received at the West Virginia-Pennsylvania boundary and transported in a continuous stream to the points of consumption in Pennsylvania. The issue before the Court in that case related to the validity, in the face of the Commerce Clause, of an order of the Pennsylvania Public Service Commission requiring the company to continue the furnishing of natural gas to another company for local resale. The Court sustained the order on the ground that the company used sufficient locally-produced gas to satisfy the order. In so ruling, the Court found it unnecessary to pass on

whether the order could be sustained if it applied to West Virginia gas, the transportation of which within Pennsylvania it held to be part of interstate commerce. The Court stated (p. 554):

> As respects the West Virginia gas we are of the opinion, in view of its continuous transportation from the place of production in one State to those of consumption in the other and its prompt delivery to purchasers when it reaches the intended destinations, that it must be held to be in interstate commerce throughout these transactions. Prior decisions leave no room for discussion on this point and show that the passing of custody and title at the state boundary without arresting the movement to the destinations intended are minor details which do not affect the essential nature of the business.

The question thus left open in the *Peoples* case was answered in the *Attleboro* case. In the latter case, the company sold and delivered electricity generated in Rhode Island at the Rhode Island-Massachusetts state line to a purchaser who resold the electricity in Massachusetts. The Court there commented that the sale "is a transaction in interstate commerce, notwithstanding the fact that the current is delivered at the State line." (273 U. S. at 86). The Court goes on to quote from the *Kansas Gas Co.* case, that " 'the paramount interest is not local but national, admitting of and requiring uniformity of regulation,' which

'even though it be the uniformity of governmental non-action, may be highly necessary to preserve equality of opportunity and treatment among the various communities and States concerned.'" 273 U. S. at 89. The Court concluded:

> * * * Nor is it material that the general business of the Narragansett Company appears to be chiefly local, while in the *Kansas Gas Co.* case the Company was principally engaged in interstate business. The test of the validity of a state regulation is not the character of the general business of the company, but whether the particular business which is regulated is essentially local or national in character; and if the regulation places a direct burden upon its interstate business it is none the less beyond the power of the State because this may be the smaller part of its general business. * * *

These rulings that the states could not regulate the very type of commerce here involved, including the portion of an interstate journey occurring within a single state, as in the *Attleboro* case itself, was responsible for the passage of the Natural Gas Act providing for federal regulation of such commerce.

(b) *As used in the Natural Gas Act "interstate commerce" has its ordinary meaning.*—The holding below that the statutory definition of interstate commerce requires that a single company be engaged in such commerce in two different states

is not required by the language of the statute, and is inconsistent both with its history (as already described) and with this Court's subsequent decisions.

The court below seemingly relied on the phrase "commerce between any point in a State and any point outside thereof," found in Section 2 (7) of the Act.[20] But this definition clearly is as broad as "interstate commerce" itself as defined in the cases cited above. Respondent is engaged in commerce between points in two states when it transports gas on the Ohio portion of a continuous through movement from other states to an Ohio destination.

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[20] The citation by the court below of its decision in *Border Pipe Line Co.* v. *Federal Power Commission*, 171 F. 2d 149, as supporting its conclusion here, is, we submit, compounding error upon error. The court there held that a company which transported natural gas in Texas to a point on the Rio Grande River, where it sold the gas for further transportation and use in Mexico, was not a "natural-gas company." This was based on the court's misconstruction of the statutory definition of interstate commerce—"commerce between any point in a State and any point outside thereof, * * * but only insofar as such commerce takes place within the United States"—as not embracing the domestic phase of the foreign commerce. Cf. *In re Reynosa Pipe Line Co.*, 5 F. P. C. 136, 136–137, affirmed *sub nom. Cia Mexicana de Gas* v. *Federal Power Commission*, 167 F. 2d 804 (C. A. 5); H. Rep. No. 1290, to accompany H. R. 5249, 77th Cong., 1st sess., pp. 3–4; *230 Boxes, More or Less, of Fish* v. *United States*, 168 F. 2d 361 (C. A. 6). Review of the *Border Pipe Line* decision by this Court was not sought for reasons other than an acceptance of its soundness.

The holding to the contrary below is, as the dissenting Judge noted (R. 206), in conflict with this Court's recent decision in *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U. S. 682. In the *Interstate* case, the transactions held to be interstate commerce consisted of sales by the respondent company, within the state in which the gas was produced, to other companies which would transport the gas across state lines. Obviously respondent's transportation of the gas within the state of destination is just as much a part of interstate commerce as Interstate's activities within the state of origin. With respect to each transaction, the company was acting only within a single state.

This Court not only held the above transactions in the *Interstate* case to be interstate commerce, but expressly held that the Natural Gas Act intended that phrase to have the meaning previously given it in the decisions of this Court. The Court stated (331 U. S. at 688):

> There is nothing in the terms of the Act or in its legislative history to indicate that Congress intended that a more restricted meaning be attributed to the phrase "in interstate commerce" than that which theretofore had been given to it in the opinions of this Court. * * * Clearly the sales in question were a part of commerce being carried on between points in

> Louisiana and points in other States. There is nothing in that language to suggest that Congress intended that sales consummated before the gas crosses a state line should not be regarded as being "in" such commerce.

This explicit ruling that the scope of the statutory definition of interstate commerce is the same as that judicially given the phrase was merely a formulation of what had, until that time, been implicitly accepted. In several prior cases, it was accepted, in some without express statement, that the statutory definition of interstate commerce accorded with its ordinary judicial meaning and embraced a company's activities in interstate commerce taking place entirely within one state. Thus, all of the operations of Hope, East Ohio's affiliate from which it purchases gas at the West Virginia-Ohio State Line, are located within West Virginia (*Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591, 594); that company had been conceded to be a "natural-gas company" within the meaning of the Act (Record in No. 34, Oct. Term, 1943, Vol. III, p. 19), and the court below asserted that the Commission's regulation of Hope was valid (R. 204). In *Colorado-Wyoming Gas Co.* v. *Federal Power Commission,* 324 U. S. 626, the company received natural gas in Colorado from out-of-state lines, transported and sold it for resale in Colorado; the operations were held in interstate commerce.

324 U. S. at 628–631. And in *Illinois Natural Gas Co.* v. *Central Illinois Public Service Company*, 314 U. S. 498, the activity held to be subject to the Natural Gas Act was the transportation of natural gas in Illinois in continuation of another's out-of-state transportation and its sale for resale in Illinois.[21] Cf. *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, 70–71;[22] see, also, *Kentucky Natural Gas Corp.* v. *Federal Power Commission*, 159 F. 2d 215 (C. A. 6); *Peoples Natural Gas Co.* v. *Federal Power Commission*, 127 F. 2d 153 (C. A.

[21] In the *Illinois Natural Gas Co.* case, the Court, citing *Re East Ohio Gas Co.*, 28 PUR (NS) 129 (1 FPC 586, *supra*, p. 4) and *Re Billings Gas Company*, 35 PUR (NS) 321 (2 FPC 288) stated: "The Federal Commission has ruled that it has jurisdiction under the Act over companies which, like appellant, sell at wholesale to local distributors gas moving interstate" (314 U. S. at 509). In the *East Ohio* case thus cited, the Commission held on the basis of the same pipe lines, except for the Panhandle connection, as are here involved, that East Ohio was engaged in the transportation of natural gas in interstate commerce and was a "natural-gas company" subject to the Commission's jurisdiction under the Act. In the *Billings* case, the Commission held since the company involved continued the transportation of natural gas from the Wyoming-Montana State boundary to points of resale within Montana, it was engaged in transportation in interstate commerce and accordingly was a "natural-gas company."

[22] The language of the Federal Power Act (49 Stat. 847, 16 U. S. C. 824, *et seq.*) involved in the *Jersey Central* case is substantially the same as the definition of interstate commerce in the Natural Gas Act. Section 201 (c) of the Power Act provides "* * * electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof."

D. C.); *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. 2d 953 (C. A. 2), certiorari denied, 319 U. S. 741.

The gap in regulation which the Act was designed to fill was created not only by companies which were engaged in interstate commerce in more than one state but as we have shown, *supra*, pp. 34–37, by those whose activities in interstate commerce take place within a single state. If the Act is to fulfill its purposes, it must extend to such companies.[23]

(c) *The statutory provisions showing the manner in which the Act would apply to respondent.*— The fact that East Ohio's sole activity in interstate commerce is the transportation of natural gas and not sale for resale, with the result that the Commission has no jurisdiction over the rates at which the company sells its natural gas, does not indicate, contrary to respondent's contention, that no useful purpose would be served by federal

[23] There are a number of companies engaged in interstate transportation solely within a single state. The Commission has already held several of these companies to be "natural-gas companies" subject to its jurisdiction under the Act. See, *e. g.*, *Re El Paso Natural Gas Co., Southern California Gas Company and Southern Counties Gas Company of California*, 5 F. P. C. 115, 118, 120; *Re The River Gas Company*, 4 F. P. C. 1098; *Central Illinois Public Service Company* v. *Panhandle Eastern Pipe Line Company*, 4 F. P. C. 1043, affirmed *sub nom. Kentucky Natural Gas Corp.* v. *F. P. C.*, 159 F. 2d 215 (C. A. 6); *Re Republic Light, Heat, and Power Company, Inc.*, 4 F. P. C. 884; *Re Producers Gas Company*, 4 F. P. C. 418; *Re Eastern Pipe Line Co.*, 3 F. P. C. 919.

regulation of East Ohio and that, therefore, authority for such regulation does not exist.

(i) The language of Section 1 (b) making the Act applicable both "to the transportation of natural gas in interstate commerce," and "to the sale in interstate commerce of natural gas for resale * * *" together with the language of Section 2 (6) defining "natural-gas company" in terms of transportation *or* sale for resale in interstate commerce, plainly demonstrates that it is not necessary for a company to sell natural gas for resale in interstate commerce before it will be subject to the Commission's jurisdiction under the Act. "Three things and three only Congress drew within its own regulatory power, delegated by the Act to its agent, the Federal Power Commission. These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural-gas companies engaged in such transportation or sale." *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission,* 332 U. S. 507, 516. Transportation alone is obviously sufficient to subject a company to the Act.

(ii) Section 5 (b) likewise clearly demonstrates the Commission's jurisdiction over companies such as East Ohio, whose activities in interstate commerce involve transportation of natural gas but not sales thereof for resale. That section

authorizes the Commission to investigate and to determine "the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas." This provision precisely reaches East Ohio's operations.

That this was the congressional intent appears from the section's history. During hearings on H. R. 11662, Mr. DeVane, the Commission's Solicitor, testified (Hearings before Subcommittee of the House Committee on Interstate and Foreign Commerce, on H. R. 11662, 74th Cong., 2d sess., p. 30):

> There are some of these companies that supply the gas locally and do not sell it at the city gates. The gas that is furnished by them to the local communities is taken from interstate pipe lines, and the purpose of this subsection is to enable the Commission to determine for the State commission what would be a reasonable gate rate for that gas so that the local commission may be in a position to fix a reasonable consumer's rate in the locality. That is the only purpose of Section 5 (b).

Mr. John E. Benton, General Solicitor, National Association of Railroad and Utilities Commissioners, also testified regarding the need for federal assistance in such circumstances (Hearings, p. 89).

The House Committee, in reporting favorably H. R. 6586, 75th Cong., 1st sess., commented in regard to the proposed Section 5 (b) (House Report No. 709, 75th Cong., 1st sess., p. 5):

> Subsection (b) authorizes the Commission upon its own motion, or upon the request of a State commission, to investigate and determine the cost of production or transportation of natural gas in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas. This subsection applies only to cases involving transportation of natural gas in interstate commerce and will greatly aid State commissions in their rate-making proceedings.

The bill as reported by the House Committee did not expressly limit such investigations to production or transportation in interstate commerce, although such was the general understanding. See Hearings on H. R. 4008, *supra*, pp. 107–110. And it was to make this understanding explicit that Section 5 (b) was amended on the floor of the House of Representatives to insert "by a natural-gas company" in the Section as enacted. 81 Cong. Rec. 6728.[24]

[24] Mr. Boren, a member of the House Committee on Interstate and Foreign Commerce, in explaining the amendment, stated:

> * * * Mr. Chairman, my amendment has been agreed to by the committee. I offer the amendment in order to keep the jurisdiction of the Federal Government as

There can be no doubt that Congress, in Section 5 (b), dealt with the class of situations represented by that here involved, *i. e.*, companies whose interstate activities involved transporta-

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clearly defined as possible from the jurisdiction of the State government in cases arising under the provisions of this bill.

During the hearings I offered this amendment and made the following statement:

"Mr. Chairman, I would like to make this observation for the record and as a challenge to the proponents of this bill: That subsection B of section 5 provides for a growth and for the extension of the influence of a Federal bureau, or commission, in a realm wherein this proposal submits on its own acknowledgment that the Federal authority and responsibility does not rightfully exist."

Mr. Chairman, this amendment clarifies the jurisdiction as between the Federal and State governments, and assures us that the Federal Government will not go into a realm where the State government already has proper authority to handle the problem.

The committee has approved the amendment, and I have nothing further to say.

Mr. JONES. Mr. Chairman, will the gentleman yield?

Mr. BOREN. Yes.

Mr. JONES. Would the gentleman's amendment prevent the Commission from making an investigation such as the gentleman from Maryland referred to a while ago, with reference to costs of production and the conditions in the various local fields?

Mr. BOREN. I may say to the gentleman from Texas that this amendment would not prevent the Commission from making such investigations. According to the definition of a natural-gas company, this amendment would simply guarantee that the commission would not step out of the realm of interstate commerce, but would make such investigations only where companies engaged in interstate commerce were concerned. (81 Cong. Rec. 6728.)

tion, not sales for resale, and intended that these companies should be "natural-gas companies" subject to the Act.

(iii) The provisions of Subsections (a) and (b) of Section 7, dealing with extension of facilities and abandonment of service, are designed exclusively for the regulation of transportation in interstate commerce, and have no relationship to the regulation of rates.[25] Section 7 (a) authorizes the Commission to direct extension or improvement of transportation facilities, establishment of physical connections and the sale of natural gas. Thus, under Section 7 (a), the Commission may, under proper circumstances, require that facilities be extended or service be provided from an interstate gas transmission line to a community which is without any or adequate service. The Commission may also require a "natural-gas company" to sell gas at wholesale to a local distributing company. The legislative history discloses that there was a need for such authority and that the states had no power in the premises. See Final Report of the Federal Trade Commission (Sen. Doc. 92, 70th Cong., 1st sess., Part 84A), pp. 609, 611, 615, 617; also Hearings on H. R. 11662, *supra*, p. 155; Hearings on H. R.

[25] East Ohio's claim that the provisions of Section 7 are without significance here since they apply only to "natural-gas companies" is without merit. That argument obviously assumes the very point in issue, inasmuch as a person becomes a "natural-gas company" under Section 2 (6) by engaging in either transportation of natural gas in interstate commerce or in its sale for resale in interstate commerce.

4008, *supra*, pp. 47, 66, 67, 68. Similarly, Section 7 (b) prohibits abandonment of facilities or service without Commission approval.

Likewise, in both its original and amended form,[26] Section 7(c) requires certificates of public convenience and necessity for construction or extension of facilities.[27] In fact, as already shown,

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[26] In its original form, Section 7 (c) required certificates of public convenience and necessity before a "natural-gas company" might undertake construction or extension of facilities for the transportation of natural gas to a market in which natural gas was being served by another "natural-gas company," or to acquire or operate any such facilities, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market (52 Stat. 825).

As amended on February 7, 1942, Section 7 (c) now provides that:

> No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extension thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission * * *.

[27] The testimony at the Hearings showed that construction of interstate facilities was free from state control and that federal regulation of such activity was needed in the public interest (Hearings on H. R. 4008, *supra*, pp. 69–70, 118). See also "State Regulation of Gas and Electric Utilities Delayed or Defeated by Plea of Interstate Commerce," Appendix L–1 to Summary Report of Federal Trade Commission (Sen. Doc. 92, Part 73A, 70th Cong., 1st sess.), pp. 79, 80, and decision there cited in footnote 4, par. 22.

supra, pp. 4–5, fn. 2, pp. 11–12, fn. 8, East Ohio has recognized the Act's regulation of transportation as distinct from sales for resale when it applied for and received from the Federal Power Commission certificates of public convenience and necessity required by the amended provisions of Section 7 (c). The Commission has continuing jurisdiction over the operation of these and East Ohio's other interstate facilities and any extension or enlargement thereof. At the end of 1945, East Ohio had an investment of $23,563,526.04, or 27.7% of its total gas property (interstate and intrastate) amounting to $85,066,881.01, classified in its accounts as "transmission" property; so classified were 903 miles of transmission lines, including the 650 miles involved here (R. 28, 55).[28]

The foregoing, we submit, demonstrates that East Ohio, being engaged in transportation of natural gas in interstate commerce within the meaning of Section 2 (7) of the Act, is a "natural-gas company" as defined in Section 2 (6) and is subjected to the Commission's jurisdiction under the Act by virtue of the grant of

[28] Section 8, vesting jurisdiction over accounting in the Commission, was designed to eliminate inflationary write-ups as well as to assure uniform accounting practices. Effective regulation of the interstate activities of a natural-gas company requires uniform accounting for the protection of consumers, investors, and the public generally. Sections 9 and 10, relating to rates of depreciation and periodic and special reports, also deal with matters calling for federal administration independently of the rate regulation aspect.

jurisdiction in Section 1 (b) over "the transportation of natural gas in interstate commerce, * * * and * * * natural-gas companies engaged in such transportation * * *."

2. *East Ohio's transmission pipe lines are not within the exemptions from Commission jurisdiction contained in Section 1 (b)*

The court below has adopted respondents' contention that East Ohio's transmission pipe lines are merely incidental to, and actually a part of, its local distribution systems and hence exempt from Commission jurisdiction as "local distribution of natural gas [and] * * * facilities used for such distribution"; as the court below read the facts, they "clearly demonstrate, that [East Ohio] is engaged *solely* in the local distribution of natural gas to local consumers. *All* of its property, including the 650 miles of high-pressure lines, is devoted to that sole purpose" (italics in original) (R. 202). Respondents have advanced the further contention which, actually, is merely another formulation of its "local distribution" contention, that East Ohio's transportation through these pipe lines is "other transportation" also exempted by Section 1 (b). The argument is that, in Section 1 (a), Congress manifested an intent to regulate only the business of transportation of natural gas and hence, since East Ohio's natural-gas transportation is in connection with its local dis-

tribution systems, it is not transportation business but "other transportation." Both formulations of this contention, we submit, are without merit.

(a) In the first place as a matter of language, East Ohio's high-pressure lines do not come within any of the statutory exemptions. The transmission from the West Virginia state line and the Panhandle connection for over 100 miles to the vicinity of the Ohio cities where the gas is eventually reduced in pressure and distributed, is neither "local", nor "distribution". The statement in Section 1 (b) that the Act "shall not apply to any *other transportation*" follows the provision that the Act "shall apply to the transportation of natural gas in interstate commerce". The phrase "other transportation" obviously relates only to transportation not covered by the preceding clauses. Inasmuch as East Ohio is engaged in "the transportation of natural gas in interstate commerce", the "other transportation" exception has no significance in this case.

Respondent's contention that its operations come within the exempting clauses of Section 1 (b) is also refuted by all other indicia of legislative intention. Since this Court has held in *East Ohio* v. *Tax Commission* that these pipe lines are used in interstate commerce of national, rather than local concern, they not only fall, as

we have already shown, *supra,* pp. 33–50, within Section 1 (b)'s affirmative grant of jurisdiction, but are also not within the scope of the section's exemptions. The Act's legislative history, discussed *supra,* pp. 20–31, shows that the jurisdiction vested in the Commission by Section 1 (b) was intended to encompass activities in interstate commerce of national concern, with the exemptions there provided restricted to matters of local concern which are within the competence of the states to regulate. Under the *East Ohio* v. *Tax Commission* case read in conjunction with the *Attleboro* case the Ohio Commission was without power constitutionally to regulate these activities of East Ohio.

Moreover, the exemptions were not intended to subtract from the affirmative grant of jurisdiction to the Commission. This is plainly shown by the legislative history of the Act. On this matter the House Committee stated (H. Rep. 709, 75th Cong., 1st sess., pp. 3–4):

> In view of the importance of section 1 (b), which states the scope of the act, it seems advisable to comment on certain provisions appearing therein. It will be noted that this subsection of the bill, after affirmatively stating the matters to which the act is to apply, contains a provision specifying what the act is not to apply to, as follows:
>
> "but shall not apply to any other transportation or sale of natural gas or to the

local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

The quoted words are not actually necessary, as the matters specified therein could not be said fairly to be covered by the language affirmatively stating the jurisdiction of the Commission, but similar language was in previous bills, and, rather than invite the contention, however unfounded, that the elimination of the negative language would broaden the scope of the act, the committee has included it in this bill. That part of the negative declaration stating that the act shall not apply to "the local distribution of natural gas" is surplusage by reason of the fact that distribution is made only to consumers in connection with sales, and since no jurisdiction is given to the Commission to regulate sales to consumers the Commission would have no authority over distribution, whether or not local in character.

Accordingly, just as the "other sales" exemption of Section 1 (b) pertains to sales other than the "sales for resale in interstate commerce" which are included within the affirmative grant of jurisdiction, i. e., direct sales to industrials (*Panhandle Eastern Pipe Line Co.* v. *Public Service Commission*, 332 U. S. 507, 516–517) and sales to ultimate consumers for domestic use, whether or not in interstate commerce, so the

"other transportation" exemption relates, we submit, to transportation other than that in interstate commerce, and could include, for example, transportation in intrastate commerce.

(b) There are additional reasons why these pipe lines are not covered by the "local distribution" exemption. In the first place, the holding below that they are exempt as property devoted to "local distribution" was based on a classification of facilities in accordance with the ultimate purpose to which the gas involved is to be put rather than according to their function. But "The natural gas industry in general performs the public service of producing and delivering natural gas to consumers. While the physical property and operations of the business may be divided into producing, transporting and distributing departments, they are all necessary parts of a complete system by which gas is produced and brought to the premises of the consumers." See Hearings on H. R. 5423, 74th Cong., 1st sess., p. 1803 (brief issued by a committee representing the Natural Gas Industry, and filed by Mr. William A. Dougherty, one of East Ohio's counsel, with the House Committee on Interstate and Foreign Commerce, holding hearings on H. R. 5423, a predecessor bill to the Natural Gas Act). Thus, practically all facilities used in the natural-gas industry have as their ultimate purpose either local distribution of gas or sale to industrial con-

sumers, both of which are exempt from the Commission's jurisdiction. The effect of classifying facilities according to ultimate purpose would be seriously to impair the operation of many of the Act's provisions, if not the Act itself.

On the other hand, classification of facilities according to function has been accepted as standard in the industry. See, *e. g.*, Sen. Doc. 92, 70th Cong., 1st sess., Part 84A, pp. 55, 111 *et seq.*, 356 *et seq.*; 584 *et seq.*; 591; 592. Indeed, the committee representing the Natural Gas Industry expressly recognized that local distribution, as distinguished from transportation, does not commence until after town-border regulating stations are reached. See Hearings on H. R. 5423, *supra*, pp. 1786, 1790. In this connection, it should be noted that East Ohio classifies the pipe lines here involved as "transmission lines" (R. 14, 27) and keeps its accounts according to the functions of production, transmission, distribution and storage (R. 27, 55, 68). Likewise, it classifies 27.7% of its property as "transmission" property (R. 28, 55), and a separate department of its business organization "has charge of its transmission lines" (R. 96). Mr. J. French Robinson, East Ohio's president and principal witness in the hearing before the Commission, was, accordingly, merely using accepted terminology when he variously referred to the pipe lines here involved as "transportation fa-

cilities" and "transmission lines" (*e. g.*, R. 45, 55–56, 65; see also, R. 88 (East Ohio's Exhibit 3)).[29]

In the second place, this Court's statement in *Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U. S. 515, 521, in regard to the company there involved, "that the predominant characteristic of the company's over-all operation is that of a local and intrastate service" does not, as respondents urge (Br. in Opp., p. 6), support the conclusion below. The facts of the *Connecticut* case differ materially from those at bar. The Connecticut company was not operating long-range transmission lines in interstate commerce similar to East Ohio's pipe lines from its connections with Hope and Panhandle. This Court noted that Connecticut "owns no lines crossing the Connecticut boundary and *does not connect with any other company at the boundary.*" (324 U. S. at 521, italics supplied.) In the *Connecticut* case this Court denied that it had held as a matter of law that "the process of reducing it [gas] from high to low pressure is not also part of such local business" (*id.*, at 534). The conclusion that the process of reducing energy or gas pressure in subdividing it to serve ultimate consumers could be a part of "local distribution"

[29] A map introduced by respondent depicts certain areas colored in yellow at and in the vicinity of the various cities and towns (Exhibit 4, R. 17, 91), and according to the testimony introduced by East Ohio, these areas are its "distribution areas" (R. 17).

does not remotely imply that the transportation of gas for over 100 miles before any reduction in pressure begins is a part of local distribution.

The principal holding in the *Connecticut* case was predicated on the assumption that *all* of the company's operations might be in local distribution. The Court rejected the company's contention that it would be exempt if only an insignificant proportion of its electric energy was transmitted interstate, saying (*id.*, at 536): "We do not find that Congress has conditioned the jurisdiction of the Commission upon any particular volume or proportion of interstate energy involved, and we do not think it would be appropriate to supply such a jurisdictional limitation by construction." In the instant case, the transmission pipe lines are clearly in interstate commerce and not themselves a part of local distribution, as we have shown (*supra*, pp. 33–50); and a substantial percentage (27.7) of East Ohio's property is classified as "transmission property" (R. 28, 55). Moreover, in *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, the Court sustained the Commission's assertion of jurisdiction over a company engaged primarily in local distribution in New Jersey; its sole activity in interstate commerce was the sale to another company in New Jersey of electricity which, by virtue of the latter company's arrangements with a New York company, occasionally

"slopped over" into New York. See, also, *Northwestern Electric Co.* v. *Federal Power Commission*, 321 U. S. 119; *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83, 90.

Finally, the finding of the court below is directly contrary to the Commission's explicit finding that "East Ohio's 650 miles of transmission pipelines * * * are not 'facilities used for' local distribution, and that East Ohio's transportation of out-of-state natural gas in such lines is neither 'other transportation' nor 'local distribution' within the meaning of Section 1 (b)." (R. 175, 148.) This finding of the Commission was, as we have shown, a reasonable and proper one, amply supported by the evidence, and hence should have been accepted by the court below. See Section 19 (b) of the Natural Gas Act; *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 145–146; *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 130–131.

(c) The *Pipe Line Cases*, 234 U. S. 548, relied on by respondent, do not support its contention that East Ohio's transportation is not "the business" of transportation (Section 1 (a))[30] because

[30] The language of Section 1 (a) is phrased not as a positive enactment, but rather as a general declaration of policy, with East Ohio's interpretation giving undue weight to the preamble. *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. 2d 953, 965 (C. A. 2), certiorari denied, 319 U. S. 741.

conducted in connection with exempt local activities. Those cases involved an amendment to the Interstate Commerce Act making it applicable "to any corporation or any person or persons engaged in the transportation of oil * * * by means of pipe lines * * *" (34 Stat. 584). With reference to the case involving the Uncle Sam Oil Company, this Court said (p. 562):

> When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling with the description of the act, the transportation being merely an incident to use at the end.

Since East Ohio's transportation is not for its own use but rather for ultimate distribution to the public, its situation is clearly distinguishable. In contrast, a parallel to East Ohio's operation was presented in *Champlin Refining Company* v. *United States*, 329 U. S. 29, where this Court, expressly refusing to expand "the actual holding of" the *Pipe Line* cases (329 U. S. at 33), held that the Champlin Company, which used its pipe line "to convey [its] own refinery products to its terminal stations" (p. 32) was engaged in the "transportation of oil or other commodity" by pipe line within the meaning of Section 1 (1) (b) of the Interstate Commerce Act (49 U. S. C. 1 (1) (b)). In so holding, the Court distinguished

between Champlin's operations and those of th Uncle Sam Oil Company (329 U. S. at 34):

> While Champlin technically is transport ing its own oil, manufacturing processe have been completed; the oil is not bein moved for Champlin's own use. Thes interstate facilities are operated to pu its finished products in the market in inte state commerce at the greatest economi advantage.

Inasmuch as this is the distinction between Eas Ohio's operations and those of the Uncle Sa Oil Company, the *Champlin* case, rather tha the *Pipe Line* cases, if either, would be appl cable here. And the *Jersey Central* and *Conne ticut Light and Power* cases, discussed *supra*, p 56–58, are also inconsistent with the argume that the nature of the major portions of the co pany's operations warrants disregard of the r mainder as merely incidental.

3. *Holding East Ohio to be a "natural-gas company" rais no constitutional questions.*

East Ohio has asserted that it has never vo untarily assumed any interstate public utili obligations. Hence, it claims, that if it be he a "natural-gas company" the Act would be give an unconstitutional construction since the Co mission would then be empowered to requi it to discharge such obligations; for exampl the Commission could then order it to establi physical connection of transportation faciliti

and sell natural gas to others, in accordance with the provisions of Section 7 (a) of the Act.

In effect, this argument questions the constitutionality of the Act as it applies generally, for, if sound, it would apply to any company engaged in the transportation or sale for resale of natural gas in interstate commerce on the date of the law's enactment. On the day prior thereto, none of these companies had assumed any interstate public utility obligations; they were not then public utilities, nor were they subject to regulation. Section 1 (a) of the Act, declaring the transportation and sale for resale of natural gas in interstate commerce to be "affected with a public interest," and the regulation of these activities "necessary in the public interest,"—together with the other provisions of the Act, imposed the public utility obligations provided in the Act on all companies, including East Ohio, which were engaged in these activities.

Federal Power Commission v. *Natural Gas Pipeline Co.*, 315 U. S. 575, puts at rest any question as to the constitutionality of the Act's imposition of public utility obligations on companies so engaged. In that case arguments basically the same as those here advanced by East Ohio were expressly rejected; this Court there held (315 U. S. at 582–583):

> * * * The sale of natural gas originating in one State and its transportation and

> delivery to distributors in any other State constitutes interstate commerce, which is subject to regulation by Congress. * * * It is no objection to the exercise of the power of Congress that it is attended by the same incidents which attend the exercise of the police power of a State. The authority of Congress to regulate the prices of commodities in interstate commerce is at least as great under the Fifth Amendment as is that of the States under the Fourteenth to regulate the prices of commodities in intrastate commerce. * * *
>
> The price of gas distributed through pipelines for public consumption has been too long and consistently recognized as a proper subject of regulation under the Fourteenth Amendment to admit of doubts concerning the propriety of like regulations under the Fifth. * * * And the fact that the distribution here involved is by wholesale rather than retail sales presents no differences of significance to the protection of the public interest which is the object of price regulation. * * * The business of cross-petitioners is not any the less subject to regulation now because the Government has not seen fit to regulate it in the past. * * *

See, also, *Natural Gas Pipeline Co.* v. *Federal Power Commission,* 120 F. 2d 625, 629–631 (C. A. 7); Hearings before the Subcommittee of the House Committee on Interstate and Foreign Commerce on H. R. 11662, 74th Cong., 2d sess.,

p. 23; cf. *Champlin Refining Co.* v. *United States*, 329 U. S. 29, 34–35.

II

THE COMMISSION'S GENERAL ORDERS WITH WHICH EAST OHIO WAS DIRECTED TO COMPLY DO NOT EXCEED STATUTORY OR CONSTITUTIONAL LIMITATIONS

The Commission's order of June 25, 1946, as amended, directed East Ohio (1) to comply with the Commission's general orders, prescribing a uniform system of accounts to be kept and observed by all natural-gas companies (Order No. 69 (set out at R. 71–73); Order No. 69–A (set out at R. 83–85)), and requiring a determination of original cost of gas plant (Order No. 73 (set out at R. 74–80)), and (2) to file for the years since and including 1939 annual financial and statistical reports on the forms prescribed by the Commission for all natural-gas companies (Orders Nos. 63, 80, 86, 100, 113 (set out at R. 69, 80, 81, 85, 87 respectively)) (R. 140, 150).[21] These orders were not special orders directed solely to East Ohio, but were general Commission orders directed to all "natural-gas companies," subject to the Commission's jurisdiction under the Act.

East Ohio contended below that, even if it were a "natural-gas company," the requirements of

[21] The Commission on December 30, 1947, amended the June 25 order to delete the requirement that East Ohio furnish special information as to the cost of transporting natural gas from the Ohio River to the City of Cleveland (R. 195–196). See *supra*, p. 11, fn 7.

these orders, as applied to it, violated the limits of the Natural Gas Act and the Constitution. The court below found it unnecessary, in view of its holding that East Ohio was not a "natural-gas company," to consider these further contentions. Since, as we have demonstrated, the Commission properly held East Ohio to be a "natural-gas company," disposition of these further contentions is necessary to terminate this litigation. For this reason, resolution of these additional issues by this Court in this proceeding is desirable, particularly since, as we show, *infra*, they are frivolous.

A. THE ORDERS ARE WITHIN THE COMMISSION'S STATUTORY POWERS

East Ohio's argument that the Commission's general accounting and annual report orders exceed statutory limitations as applied to it, is predicated on the fact that these orders do not restrict the accounts and information so required to its facilities in interstate commerce, but embrace all its properties, including its facilities used for local distribution, exempted from Commission regulation by Section 1 (b). There is, we submit, no merit to this contention, for the provisions of the Natural Gas Act, pursuant to which these requirements were imposed, plainly were not intended to confine the Commission's jurisdiction in these matters solely to facilities used in

connection with a company's activities in interstate commerce.

1. Section 6 (b) authorizes the Commission to require "*every natural-gas company* * * * [to] file with the Commission an inventory of *all or any part of its property and a statement of the original cost thereof*, and [to] keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction." (Italics supplied.) Section 10 (a) required "*every natural-gas company* * * * [to] file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this Act." (Italics supplied.) Section 16 authorizes the Commission to issue orders, rules and regulations "necessary or appropriate to carry out the provisions of this Act." And Section 8 (a) provides: "Every *natural-gas company* shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act: *Provided, however*, That nothing in this Act shall relieve any such natural-gas company from keeping any accounts, memoranda, or records which such natural-

gas company may be required to keep by or under the authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by *such natural-gas companies,* and may classify such natural-gas companies and prescribe a system of accounts for each class." (Italics supplied.)

Thus, these provisions authorize the Commission to impose the obligations on all "natural-gas companies" and make no distinctions among these companies, based, as East Ohio would read these provisions, on the extent of the company's activities in interstate commerce. Moreover, they vest discretion in the Commission to prescribe such requirements "as necessary or appropriate for purposes of the administration of this Act." Among the purposes of the Act is the regulation of companies engaged in transportation of natural gas in interstate commerce as well as such transportation itself. See Section 1 (b); *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission,* 332 U. S. 507, 516. In addition, the proviso in Section 8 (a) plainly manifests a congressional recognition that the power, affirmatively vested in the Commission by that section over a "natural-gas company's" accounts, includes not only its interstate facilities, beyond the power of the states to regulate, but also its local facilties, which the states may regulate. Cf. *Hartford Electric Light Co.* v. *Federal Power Commission,* 131 F. 2d 953, 964 (C. A. 2), certiorari denied, 319 U. S. 741.

2. That these provisions were not intended to be limited in application to the interstate facilities of "natural-gas companies" is clear from their legislative history. As to the scope of Section 6 (b), Mr. Milo R. Maltbie, Chairman of the Public Service Commission of New York, testifying before the House Committee on Interstate and Foreign Commerce during hearings on H. R. 4008 (75th Cong., 1st sess.), pointed out that Section 7(b) of the Act was confined to "facilities subject to the jurisdiction of the Commission," and said (pp. 110–111):

> But, in sections 6 (a), 6 (b), and 7 (a), there is no such limitation, and unless that is read in by inference, which is stretching it a good deal, unless that limitation were read into those sections, there is in those sections a conference of authority on the Federal Power Commission over intrastate business and intrastate facilities.

Mr. Maltbie later commented in regard to Section 6 (b) that (p. 147):

> The act as it now reads covers all property whether used in interstate commerce or in intrastate commerce.

Upon request of the Committee, Mr. Maltbie submitted a number of proposed amendments, including one which would have added after the words "all or any part of its property" in Section 6 (b), the words "used and useful in whole or in part in interstate commerce." (Hearings,

p. 147). No such limitation was added to Section 6 (b).

The legislative history of Section 8 also belies any intention to limit the scope of the Commission's accounting power. In the hearings on H. R. 4008, the following colloquy as to the scope of 8 (a) occurred (Hearings, pp. 115–116):

> Mr. COLE [Member of House Committee]. Going back for a moment, do I understand you oppose the accounting provisions applying to the companies which are engaged partly in interstate and partly in intrastate business?
>
> Mr. MALTBIE [Chairman, Public Service Commission of New York]. Do I oppose them?
>
> Mr. COLE. Yes. You do not want section 8 (a) to apply to any company which has, say, a minor part of its business in interstate commerce?
>
> Mr. MALTBIE. I do not think it is necessary to go that far, Mr. Cole, because so far we have been able to get together, the States with the Federal Communications Commission, and substantially with the Federal Power Commission on a system of accounts, a common system of accounts. Now, if that can be done that will avoid the constitutional question or any other question that might be raised.
>
> Mr. COLE. Does not the operation of this section ultimately lead to the very laudable objective; that is, uniformity of ac-

counting, rates of depreciation, and so forth, for these companies engaged in interstate activities? Your State commission rulings might be a model for the Federal Power Commission to follow. Other States would not. The holding-company bill, the Federal Power Act, and others which at this minute I do not recall provide for substantially the same thing, to bring about some uniform accounting system.

Mr. MALTBIE. I think you may rely for the time being on endeavors to get uniformity so far as an accounting system is concerned.

What I was objecting to particularly was where it comes to a specific case. You are going to determine that a specific item shall go into this account or into that account. There you are going further than you need to for uniformity.

Mr. COLE. Well, that would impose upon the company two items, but would not interfere with what the State commission would require a company to do?

Mr. MALTBIE. Let us see——

Mr. COLE. Well, that is specifically exempted in this provision. What the Federal Power does under section 8 (a) shall not relieve any company from keeping such accounts as the State commission requires.

Moreover, Section 8 was derived from Section 301 of the Federal Power Act. The Senate Com-

mittee on Interstate Commerce in its report to accompany S. 2796, 74th Cong., 1st sess., which became the Federal Power Act, emphasized that accounting requirements extended to the "entire business" of the company, saying (S. Rep. No. 621, 74th Cong., 1st sess., p. 53):

> Section 301 requires every licensee and every public utility subject to the act to keep its accounts in the manner prescribed by the Commission; it thus takes a long step in the direction of the uniform accounting which is so essential in the electric industry. *The authority of the Commission over the accounts of companies under its jurisdiction extends to the entire business of such companies,* but there is an express provision that nothing in the act shall relieve any company from keeping such accounts as it is required to keep by a State commission or by any requirement of State law. [Italics supplied.]

Significant, also, in this connection is the statement made during debate on the floor of the House by Representative Cole, a member of the House Committee in charge of the bill (79 Cong. Rec. 10384):

> A uniform system of accounting is established, and because of the demand therefor and the admission on the part of most everyone that such is advisable, the provisions therefor will very likely be re-

quired of companies now subject to State regulation because of a small fraction of their business being under the Federal Commission.

3. This Court has often construed Section 20 of the Interstate Commerce Act (49 U. S. C. 20), vesting similar power in the Commerce Commission as to accounts and annual reports, not to be restricted to the specific activities subject to Commission regulation. *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194, 211; *Kansas City Southern Ry. Co.* v. *United States*, 231 U. S. 423, 445, 449; *Norfolk & Western Ry. Co.* v. *United States*, 287 U. S. 134, 138–141; see, also, *American Telephone & Telegraph Co.* v. *United States*, 299 U. S. 232, 237. "The object of requiring such accounts to be kept in a uniform way and to be open to the inspection of the Commission is not to enable it to regulate the affairs of the corporations not within its jurisdiction, but to be informed concerning the business methods of the corporations subject to the act that it may properly regulate such matters as are really within its jurisdiction." *Interstate Commerce Commission* v. *Goodrich Transit Co., supra* at 211.

Moreover, this Court has read Sections 208 and 301 (a) of the Federal Power Act, which are the equivalents to Sections 6 and 8 (a) respectively

of the Natural Gas Act,[32] as plenary and not limited to the company's facilities in interstate commerce. *Jersey Central Co.* v. *Federal Power Commission,* 319 U. S. 61; *Northwestern Electric Co.* v. *Federal Power Commission,* 321 U. S. 119; see, also, *Alabama Power Co.* v. *Federal Power Commission,* 128 F. 2d 280, 285–286 (C. A. D. C.),

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[32] Sections 6 and 8 (a) of the Natural Gas Act are substantially the same as the Power Act's Sections 208 and 301 (a). Section 208 provides:

> (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every public utility, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation, and the fair value of such property.
>
> (b) Every public utility upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction. 49 Stat. 853, 16 U. S. C. 824g.

Section 301 provides:

> (a) Every licensee and public utility shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act, including accounts, records, and memoranda of the generation, transmission, distribution, delivery, or sale of electric energy, the furnishing of services or facilities in connection therewith, and receipts and expenditures with respect to any of the foregoing: *Provided, however,* That nothing in this Act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any State. * * * *Id.* 854, 16 U. S. C. 825.

certiorari denied, 317 U. S. 652; *Louisville Gas & Electric Co.* v. *Federal Power Commission,* 129 F. 2d 126, 133–134 (C. A. 6), certiorari denied, 318 U. S. 761; *Northern States Power Co.* v. *Federal Power Commission,* 118 F. 2d 141, 144 (C. A. 7); *Pennsylvania Power & Light Co.* v. *Federal Power Commission,* 139 F. 2d 445 (C. A. 3), certiorari denied, 321 U. S. 798. In the *Jersey Central* case, this Court held, notwithstanding the language of 201 (a) of the Power Act, that "such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States," that Sections 203 (a) and 204 (a) of the Power Act vested general power in the Commission over the issue of all securities or assumption of all obligations by a public utility subject to the Act. In so holding, the Court stated "This conclusion finds strong support in the fact that not only § 203 (a), here under discussion, but §§ 204 (a), 208 and 301 (a) regulate matters obviously subject to state regulation" (319 U. S. at 75). The Court continued (at pp. 76–77):

> The legislative history points to this result. When S. 2796, containing the progenitor of the disputed section, was reported by the Committee on Interstate Commerce of the Senate, § 201 (a) concluded:
>
> "It is further declared to be the policy of Congress to extend Federal regulation

Natural Gas Act.[24] The Natural Gas Act does not contain the phrase appearing in Section 201 (a) of the Power Act to the effect that "such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States," which was the basis of the companies' contentions in the *Jersey Central* and *Northwestern* cases. Furthermore, the Natural Gas Act in addition to vesting jurisdiction over the transportation and sale for resale of natural gas in interstate commerce, grants the Commission jurisdiction generally over "natural-gas companies engaged in such transportation or sale." The Power Act contains no such provision.

It is immaterial that the Ohio Commission also exercises certain accounting authority over East Ohio's operations. The Commission in its opinion has already indicated that its finding that East Ohio is a "natural-gas company" will not interfere with the exercise of the jurisdiction of the State of Ohio over it. Nor is supersedure of the State of Ohio's authority suggested anywhere. In any case, the Natural Gas Act recognizes the possibility of dual regulation at least in accounting matters. See Section 8 (a), partic-

[24] As in the case of the Power Act, the reports of the Federal Trade Commission show that "inflation of assets" and stock watering among some natural-gas companies were "specific evils" in the industry. They also show that in 1935, the investment accounts of East Ohio reflected write-ups amounting to over $15,000,000. See *supra*, p. 30, fn. 17; cf. R. 177.

to those matters which cannot be regulated by the States, and also to exert Federal authority to strengthen and assist the States in the exercise of their regulatory powers and not to impair or diminish the powers of any State commission."

The same bill had §§ 208 (a) and 301 (a), just referred to, which did regulate matters which could be regulated by the states. After its passage through the Senate in this form, the bill went to the House and 201 (a) was there amended by the Committee on Interstate and Foreign Commerce (H. Rep. No. 1318, 74th Cong., 1st Sess., June 24, 1935) to conclude, as it now does, "such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States." The report, although it commented on the section, did not mention this change as one of substance from the conclusion of the Senate bill. H. Rep. No. 1318, 74th Cong., 1st Sess., p. 26. Sections 208 and 301, with their regulation of matters subject to state regulation, remained unchanged. * * * [33]

[33] It is to be noted that the legislative history of the Act shows a general purpose to meet the need for a nationwide uniform accounting system (S. Rep. No. 621, 74th Cong., 1st Sess., pp. 17–18, 53; H. Rep. No. 1318, 74th Cong., 1st Sess., pp. 7–8, 30–31; 79 Cong. Rec. 10574–10575; and House Hearings on H. R. 5423, 74th Cong., 1st Sess., pp. 2170–2171) disclosed by the Federal Trade Commission's report of its investigation of the public utility industry (House Hearings on H. R. 5423, 74th Cong., 1st Sess., pp. 178–179).

A like view of the Commission's plenary accounting authority was expressed in the *Northwestern Electric* case. In that case, the Commission, exercising its accounting power under Section 301 (a) of the Power Act, had required Northwestern, which, although it was a public utility under the Act, operated local electric and steam-heating facilities in Oregon and Washington, to amortize a $3,500,000 "write-up" by annual charges to its earned surplus. Although the company there contended, as East Ohio does here, that this requirement exceeded the powers conferred upon the Commission by dealing with local matters (see Brief for Petitioners in No. 195, October Term, 1943, pp. 15–16, 25 *et seq.*), this Court sustained the Commission's order, with the comment (321 U. S. at 122–123):

> The Commission's power to prescribe a uniform system of accounting and to require Northwestern to keep accounts accordingly is not open to doubt. Its action was fully justified by the Act, the relevant provisions of which are within the legislative power. The only inquiries now open are whether the order as to the disposition of the $3,500,000 item appearing in Account 107 goes beyond the Commission's statutory mandate or constitutional limitations. We hold that it does neither.

It follows, *a fortiori*, we submit, that the Commission has similar plenary power under the

ularly the proviso therein. As this Court stated in *Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U. S. 515, 533, in regard to Commission jurisdiction under the similar Power Act provisions:

> * * * once a company is properly found to be a "public utility" under the Act the fact that a local commission may also have regulatory power does not preclude exercise of the Commission's functions.[35]

B. THE ORDERS DO NOT VIOLATE ANY PROVISION OF THE CONSTITUTION

1. East Ohio's claim that, so far as the orders here apply to it, they are "useful, if at all, only in the local regulation of intrastate commerce," and hence that they go beyond the commerce power of Congress and infringe upon the reserve power of the states, is inconsistent with *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194, 214, and *Northwestern Electric Co.* v. *Federal Power Commission*, 321 U. S. 119, which squarely rejected the very contention here advanced by East Ohio. In the *Northwestern Electric Co.* case, where it sustained the far more drastic order there involved as not going "beyond * * * constitutional limitations" (321 U. S. at 123), the Court stated (321 U. S. at 125):

[35] Cf. *Arkansas Power & Light Co.* v. *Federal Power Commission*, 156 F. 2d 821 (C. A. D. C.), reversed *per curiam*, 330 U. S. 802.

The Commission's order does not violate the reserved rights of the states under the Tenth Amendment. We are not here concerned with what the regulatory authorities of Oregon or Washington may or may not demand or permit. Whatever that action may be, it is subordinate to Congress' appropriate exercise of the commerce power. The Commission's order does not purport presently to affect or constrain action by the states within their fields.

2. This Court's explanation in *Interstate Commerce Commission* v. *Goodrich Transit Co.,* 224 U. S. 194, as to the function of uniform systems of accounts and the desirability that they be kept open to inspection, *i. e.,* in order that the regulatory body "be informed concerning the business methods of the corporations subject to the act that it may properly regulate such matters as are really within its jurisdiction" (224 U. S. at 211) is a complete answer to the contention that the Commission's orders violate the Fourth Amendment's prohibition against unreasonable searches and seizures. See also, *Northwestern Electric Co.* v. *Federal Power Commission,* 321 U. S. 119.

3. East Ohio's further contention that these orders involve a deprivation of property without due process of law in violation of the Fifth Amendment rests in part upon its assumption that the cost of compliance with the Commission's

orders would be between $1,500,000 and $2,000,000 and in part on its unsupported conclusion that the costs of compliance with the orders would be unreasonable. This claimed cost was the "general estimate" of East Ohio's president, unaccompanied by any details which would lend it credibility (R. 25). The Commission found that "the unsupported estimate of cost of reclassification and original cost studies is not convincing, for our experience with other companies with greater property investment indicates that this estimate is considerably exaggerated" (R. 179).[36]

Nor are the costs of compliance unreasonable. In *American Telephone & Telegraph Co.* v. *United States,* 299 U. S. 232, where the cost of compliance with the Federal Communications Commission's uniform system of accounts was estimated for one of the companies to be in excess

[36] East Ohio's plant account, as of December 31, 1945, was $85,066,881.01 (R. 55). In *Re Cities Service Gas Co.*, 3 F. P. C. 459, the company's plant account appeared on the books as $86,134,828 (*id.*, p. 465); the company claimed that its reclassification and original cost studies cost $850,000 (*id.*, p. 482); the staff claimed that these studies could have been prepared and completed at a cost of not more than $592,000 (*id.*, p. 483). In *Re City of Cleveland* v. *Hope Natural Gas Co.*, 3 F. P. C. 150, where the plant account claimed by the company was $69,735,638 (*id.*, p. 159), the company claimed that it had spent $675,000 for its reclassification and original cost studies (*id.*, p. 178). These studies, however, included a detailed property report by units (*id.*, p. 158), which the Commission had not required.

of $4,000,000 for the first year and over $1,000,000 per year thereafter (Record in No. 74, October Term, 1936, pp. 332–333), this Court stated "the evidence does not show that the expense of revising the accounts will lay so heavy a burden upon the companies as to overpass the bounds of reason." 299 U. S. at 247. The substantially lower costs here involved likewise do not "overpass the bounds of reason" particularly since, as the Commission found (R. 179):

> * * * effective regulation in the public interest provided for by Congress, the objective of the orders, is justification for legitimate cost of compliance. * * *
>
> * * * protection of the public interest requires uniform accounting by natural-gas companies, as was contemplated by Congress in the Natural Gas Act. To provide effective regulation of such companies, we must have information available from a uniform system of accounts. Otherwise, such regulation cannot be maintained on a national basis.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the court below should be reversed and the Commission's order, directing East Ohio to comply as a "natural-gas company" with its general accounting orders applicable to all "natural-gas companies" and to file

annual reports on forms prescribed by the Commission for all "natural-gas companies," be affirmed.

PHILIP B. PERLMAN,
Solicitor General.
H. G. MORISON,
Assistant Attorney General.
ROBERT L. STERN,
Special Assistant to the Attorney General.
PAUL A. SWEENEY,
MELVIN RICHTER,
Attorneys.

BRADFORD ROSS,
General Counsel,
WILLIAM S. TARVER,
Assistant General Counsel,
BERNARD A. FOSTER, JR.,
HOWELL PURDUE,
Attorneys,
Federal Power Commission.

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